

GOLDBERG & FLIEGEL LLP
ATTORNEYS AT LAW
488 MADISON AVENUE, SUITE 1120
NEW YORK, NEW YORK 10022
www.goldbergfliegel.com
www.employmentlaw.nyc

KENNETH A. GOLDBERG
MICHELE L. FLIEGEL

TELEPHONE: (212) 983-1077
FACSIMILE: (212) 973-9577

December 8, 2020

Honorable Vera M. Scanlon, U.S.M.J.
United States District Court
Eastern District Of New York
225 Cadman Plaza East, 1214 South
Courtroom: 13A-South Wing
Brooklyn, New York 11201

Re: Morales et al. v. Fourth Avenue Bagel Boy, Inc. et al.
18 Civ. 3734 (DLI) (VMS)

Dear Judge Scanlon:

We represent the Plaintiffs in the above-referenced matter, commenced in June 2018. (ECF #1). We submit this letter motion following the brief video conference on November 24, 2020 in this matter and Plaintiff's November 23, 2020 letter to the Court. (ECF #48).

By this motion, Plaintiffs request that the Court: (1) strike Defendants' Answer and enter default as against Defendant Natale; (2) grant Plaintiffs' previously filed motion for entry of default judgment as against the corporate defendant (ECF ##30, 44)¹; and (3) award such other and further appropriate relief.

¹On July 27, 2020, the Court stated the following as to Plaintiffs' motion: "Motion referred to Magistrate Judge Vera M. Scanlon" and "The Clerk of Court having entered default, this matter is referred to Magistrate Judge Vera M. Scanlon to conduct an inquest, if necessary, as to damages and/or legal fees." (See Civil Docket entries of July 27, 2020).

As Your Honor may recall, during the November 4, 2020 discovery conference, the Court asked Defendant Natale: “Is there anything else we should put on the record for today?” (See Transcript of 11/4/20 Conference, at 9). Defendant Natale replied, on the record, as follows: “Well, I closed the corporation. I’ve been out of here since October 1st and the landlord, he rented it. He took it over.” Defendant Natale then added “I’m going to collect unemployment.” (See Transcript of 11/4/20 Conference, at 9-10). Plaintiffs maintain that Defendant Natale intentionally made those statements to the Court, during a discovery conference, to influence in the Court regarding discovery and other proceedings in this action. Plaintiffs also maintain that Defendant Natale absolutely knew that he has a legal obligation to be truthful with the Court.

On November 23, 2020, Plaintiffs filed a letter with the Court in anticipation of the conference scheduled for November 24, 2020 (ECF #48). As set forth in that letter, following the November 4, 2020 conference, we mailed a copy of the Court’s November 5th Order to Defendant Natale and we sent a process server to Defendant Natale’s store to hand-deliver the Order. According to the process server, he entered the store on November 14, 2020 and it was open. When the process server initially entered the store, a woman identified herself as Defendant Natale’s daughter, confirmed that Defendant Natale owns the business, and said that he was in the back room. (Exhibit A). According to public records, the corporate defendant remained “active.” (Exhibit B). The above information *directly contradicts* the statements made by Defendant Natale to the Court, on the record, on November 4, 2020.

Defendant Natale failed to respond to Plaintiffs’ November 23, 2020 letter and did not appear for the November 24th conference. Instead, he sent an e-mail to Your Honor on November 24th suddenly requesting adjournment of that conference. (ECF #49).

On November 30, Defendant Natale sent another e-mail to Your Honor. Notably, in that e-mail, Defendant Natale did *not* deny the information in Plaintiffs' November 23rd letter.

On December 1, 2020, Defendant Natale sent an e-mail to my Firm. Notably, in that e-mail, Defendant Natale *admitted* that a process server entered his store in November and communicated with *his daughter*. By his own words, Defendant Natale *admits* that *his store* was open. Defendant Natale also alleged in that e-mail to my Firm that "the Corp was closed by the state." (Exhibit C). Notwithstanding Defendant Natale's assertion, according to public records, the corporate defendant remains "active" as of December 3, 2020. (Exhibit D).

Moreover, regardless of the actual status of the corporate defendant, Defendant Natale continues to own and operate his business, in direct contradiction to his statements to the Court, on the record, on November 4, 2020, and Defendant Natale remains personally liable in this case.

Based on the above, Plaintiffs maintain that Defendant Natale's November 4, 2020 statements to the Court – that he closed his business *and* vacated the premises by October 1 – were *knowingly false* and warrant the imposition of sanctions. *See generally* Fed. R. Civ. 16, 37, 55; *Guanglei Jiao v Shang Shang Qian Inc.*, 2020 US Dist LEXIS 144888 (EDNY Aug. 11, 2020), *adopted in full* 2020 US Dist LEXIS 157973 (EDNY Aug. 31, 2020, No. 18-CV-5624 (ARR) (VMS)). Even if Defendant Natale closes his business *in the future*, such a maneuver would not be a defense to his personal liability or his November 4th statements to the Court.

Accordingly, Plaintiffs respectfully request that the Court grant this letter motion and award the relief requested herein. Thank you for Your Honor's attention to this matter.

Respectfully submitted,
/s/ Kenneth A. Goldberg
Kenneth A. Goldberg

EXHIBIT A

RETURN OF SERVICE

UNITED STATES DISTRICT COURT
Eastern District of New York

Index Number: 1:18-CV-03734-DLI-VMS

Date Filed: _____

Plaintiff:
MORALES ET AL

vs.

Defendant:
FOURTH AVENUE BAGEL BOY, INC. ET AL

For:
Kenneth Goldberg Esq
GOLDBERG & FLIEGEL LLP
488 Madison Avenue
Suite 1120
New York, NY 10022

Received by Direct Process Server LLC on the 6th day of November, 2020 at 3:56 pm to be served on
FOURTH AVENUE BAGEL D/B/A STEVE'S BAGELS, 6907 4TH AVENUE, BROOKLYN, NY 11209

I, Joseph Gill, do hereby affirm that on the **14th day of November, 2020 at 9:34 am, I:**

served a **CORPORATION** by delivering a true copy of the **ORDER**, to: **Jane Doe** as **Daughter** for
FOURTH AVENUE BAGEL D/B/A STEVE'S BAGELS, at the address of: **6907 4th Avenue, Brooklyn, NY 11209**, and informed said person of the contents therein, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Additional Information pertaining to this Service:

11/14/2020 9:34 AM Attempted Service. I enter the business location at 6907 4TH AVENUE BROOKLYN NY 11209 with the name Steve's Bagel displayed on the front. Because of Covid they only let a few people in at a time. I asked a female in her twenties if the business is still owned by Steven Natale she replied in the positive and stated that he is her father. She also stated that he is in the backroom currently. She stepped away to serve another customer. I asked another employee, a Hispanic male for Steven Natale, he left to the backroom but did not return. I asked the same female who stated she was the subject's daughter again for Steven Natale. She asked what for? I stated that I had Order from Federal Court for him and FOURTH AVENUE BAGEL D/B/A STEVE'S BAGELS. She then stated that he is not there and that he doesn't run the business anymore. I stated in my loudest voice that I was leaving Order from Federal Court for him and left the documents on the counter in front of the subject's daughter. I told her she the subject's daughter/ co-worker and can accept papers for him. She became irate, picked up the papers and stated that she is going to put the papers in the garbage.

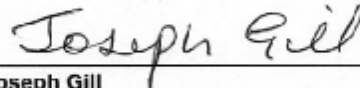
Description of Person Served: Age: 26, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 160, Hair: Auburn, Glasses: N



RETURN OF SERVICE For 1:18-CV-03734-DLI-VMS

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare pursuant to 28 USC 1746 that I have read the foregoing document and the facts stated are true and correct.

Executed on : 11/19/2020
Date



Joseph Gill

**Direct Process Server LLC
22 Southern Blvd
Suite 103
Nesconset, NY 11767
(631) 406-6989**

Our Job Serial Number: DPR-2020001713

RETURN OF SERVICE

UNITED STATES DISTRICT COURT
Eastern District of New York

Index Number: 1:18-CV-03734-DLI-VMS

Date Filed: _____

Plaintiff:
MORALES ET AL

vs.

Defendant:
FOURTH AVENUE BAGEL BOY, INC. ET AL

For:
Kenneth Goldberg Esq
GOLDBERG & FLIEGEL LLP
488 Madison Avenue
Suite 1120
New York, NY 10022

Received by Direct Process Server LLC on the 6th day of November, 2020 at 3:56 pm to be served on
STEVEN NATALE, 6907 4TH AVENUE, BROOKLYN, NY 11209

I, Joseph Gill, do hereby affirm that on the **14th day of November, 2020 at 9:34 am, I:**

served a **SUITABLE AGE PERSON** by delivering and leaving a true copy of the **ORDER** with **Jane Doe as Daughter at 6907 4th Avenue, Brooklyn, NY 11209**, the said premises being the respondent's place of **Work** within the State of New York. Deponent completed service by mailing a true copy of the **ORDER** in a postpaid envelope addressed to: **6907 4th Avenue, Brooklyn, NY 11209** and bearing the words "Personal & Confidential" by First Class Mail on **11/17/2020** and placed in an official depository of the U.S.P.S. in **New York State**

Additional Information pertaining to this Service:

11/14/2020 9:34 AM Attempted Service. I enter the business location at 6907 4TH AVENUE BROOKLYN NY 11209 with the name Steve's Bagel displayed on the front. Because of Covid they only let a few people in at a time. I asked a female in her twenties if the business is still owned by Steven Natale she replied in the positive and stated that he is her father. She also stated that he is in the backroom currently. She stepped away to serve another customer. I asked another employee, a Hispanic male for Steven Natale, he left to the backroom but did not return. I asked the same female who stated she was the subject's daughter again for Steven Natale. She asked what for? I stated that I had Order from Federal Court for him and FOURTH AVENUE BAGEL D/B/A STEVE'S BAGELS. She then stated that he is not there and that he doesn't run the business anymore. I stated in my loudest voice that I was leaving Order from Federal Court for him and left the documents on the counter in front of the subject's daughter. I told her she the subject's daughter/ co-worker and can accept papers for him. She became irate, picked up the papers and stated that she is going to put the papers in the garbage.

Description of Person Served: Age: 26, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 160, Hair: Auburn, Glasses: N



RETURN OF SERVICE For 1:18-CV-03734-DLI-VMS

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare pursuant to 28 USC 1746 that I have read the foregoing document and the facts stated are true and correct.

Executed on : 11/19/2020
Date

Joseph Gill
Joseph Gill

Direct Process Server LLC
22 Southern Blvd
Suite 103
Nesconset, NY 11767
(631) 406-6989

Our Job Serial Number: DPR-2020001712

EXHIBIT B

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through November 18, 2020.

Selected Entity Name: FOURTH AVENUE BAGEL BOY, INC.

Selected Entity Status Information

Current Entity Name: FOURTH AVENUE BAGEL BOY, INC.

DOS ID #: 1961759

Initial DOS Filing Date: OCTOBER 03, 1995

County: KINGS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

STEVEN NATALE
6907 FOURTH AVENUE
BROOKLYN, NEW YORK, 11209

Chief Executive Officer

STEVEN NATALE
6907 FOURTH AVENUE
BROOKLYN, NEW YORK, 11209

Principal Executive Office

FOURTH AVENUE BAGEL BOY, INC.
6907 FOURTH AVENUE
BROOKLYN, NEW YORK, 11209

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 03, 1995	Actual	FOURTH AVENUE BAGEL BOY, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#) [New Search](#)

[Services/Programs](#) | [Privacy Policy](#) | [Accessibility Policy](#) | [Disclaimer](#) | [Return to DOS](#)
[Homepage](#) | [Contact Us](#)


EXHIBIT C

      **More** ▼

Keep as New Reply Reply All Forward Delete Spam

(No subject)



 **sSTEVEN nATALE** sbaker850@aol.com [Hide](#) ▼

Tue, Dec 1, 2020 2:14 pm

To: KGldbrg@aol.com

Just letting you know Ken your process server never served me with anything. He through the letter on the floor. And spoke some very nasty superlatives to my young daughter.
If u like an can produce witness to that as well.
And the Corp was closed by the state.
Sorry.

Sent from my iPhone




 Reply  Reply All  Forward

EXHIBIT D

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through December 3, 2020.

Selected Entity Name: FOURTH AVENUE BAGEL BOY, INC.

Selected Entity Status Information

Current Entity Name: FOURTH AVENUE BAGEL BOY, INC.

DOS ID #: 1961759

Initial DOS Filing Date: OCTOBER 03, 1995

County: KINGS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

STEVEN NATALE
6907 FOURTH AVENUE
BROOKLYN, NEW YORK, 11209

Chief Executive Officer

STEVEN NATALE
6907 FOURTH AVENUE
BROOKLYN, NEW YORK, 11209

Principal Executive Office

FOURTH AVENUE BAGEL BOY, INC.
6907 FOURTH AVENUE
BROOKLYN, NEW YORK, 11209

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 03, 1995	Actual	FOURTH AVENUE BAGEL BOY, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#) [New Search](#)

[Services/Programs](#) | [Privacy Policy](#) | [Accessibility Policy](#) | [Disclaimer](#) | [Return to DOS](#)
[Homepage](#) | [Contact Us](#)